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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,973	08/14/2001	Sean Brown	1509-212	7758

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FORT COLLINS, CO 80527-2400

EXAMINER

HEWITT II, CALVIN L

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

P.m

**Office Action Summary**

Application No.

09/928,973

Applicant(s)

BROWN ET AL.

Examiner

Calvin L Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,8-11 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8-11 and 15-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Status of Claims***

1. Claims 1, 3, 6, 8-11, and 15-24 have been examined.

***Response to Arguments/Amendments***

2. Applicant's arguments with respect to claims 1, 3, 6, 8-11, and 15-24 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Objections***

3. Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 24 is directed to a processor. However, claim 1 is dedicated to a billing method.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 is directed to a processor. However, claim 1 from which it depends is directed to a billing method. Therefore, the Applicant has not distinctly pointed out the subject matter of claim 24 (An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process- In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 9-11, 15, 16, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al., U.S. Patent No. 6,298,446

As per claims 1, 9-11, 20, 21, 22 and 24, Schreiber et al. teach a method for accessing content comprising: serving a webpage without a content item to a

client (column 9, lines 20-46; column 10, lines 3-23; column 11, lines 40-47) wherein said page includes an interface component that enables a user to select said content item for access (column 33, lines 15-30). Specifically, Schreiber et al. teach purchasing (e.g. generating a billing event at the time of at least the first serving of content) said content item (column 33, lines 15-30), hence, to one of ordinary skill, the teachings of Schreiber et al. teaches, either inherently or clearly suggests, presenting the protected item to the client within the page (column/line 15/47-16/53; column 21, lines 1-50; column/line 24/47-25/33). Regarding WAP decks, it would have been obvious to one of ordinary skill to apply the teachings of Schreiber et al. to portable internet devices such as a PDA or wireless phone.

As per claims 15, 16, Schreiber et al. teach purchasing (e.g. billing event) said content item (column 33, lines 15-30). Specifically, a purchase is initiated by a user's "mouse" actions, which triggers "e-commerce transaction software" (column 33, lines 15-30). Hence, a server (e.g. stateless machine) (figures 3 and 5) receives a stored selection indicator that indicates the specific content item desired by the user.

As per claim 23, the system of Schreiber et al. is directed to protecting content accessible over the internet (abstract), therefore, the Schreiber et al. system inherently accommodates a plurality of clients accessing and/or purchasing the same or varying content. Hence, in the event of a plurality of

requests from a plurality of clients the "e-commerce transaction software"  
(column 33, lines 15-30) necessarily checks a plurality of stored selections.

8. Claims 3, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al., U.S. Patent No. 6,298,446 in view of Wiser et al., U.S. Patent No. 6,385,596.

As per claims 3, 16, and 17, Schreiber et al. teach providing a place holder for a content item (figure 5) and allowing a user to purchase said item (column 33, lines 15-30). However, Schreiber et al. doesn't specifically recite a placeholder that includes an item descriptor and price indication. Wiser et al. also provide users with an item descriptor and an access price indication for accessing said item (figure 8). Wiser et al. also teach a database for tracking user purchases (figure 1B; column 5, lines 43-65; column 9, lines 40-53). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Schreiber et al. and Wiser et al. in order to generate revenue by charging users a fee for accessing protected content.

9. Claims 6, 8, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al., U.S. Patent No. 6,298,446 and Wiser et al., U.S. Patent No. 6,385,596. as applied to claim 1 above, and further in view of Oki et al., U.S. Patent No. 6,115,471.

As per claims 6, 8, 18, and 19, Schreiber et al. teach providing a place holder for a content item (figure 5) and allowing a user to purchase said item (column 33, lines 15-30), while Wiser et al. also provide users with an item descriptor and an access price indication for accessing said item (figure 8). However, neither Schreiber et al. nor Wiser et al. teach only teaching generating a billing event the first time an item is served. Oki et al. teach a method and system for providing users with content over a network. Specifically, Oki et al. teach a recovery service that only generates a billing event the first time the content is downloaded (column 8, lines 5-29). Specifically, Oki et al. use a database to determine whether a user is able to recover content (column 8, lines 5-29). Therefore, it would have been obvious to combine the teachings of Schreiber et al., Wiser et al. and Oki et al. in order to allow a user to retrieve lost or corrupted content free of charge (column 8, lines 5-29).

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (703) 308-8057. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
c/o Technology Center 2100  
Washington, D.C. 20231

or faxed to:

(703) 305-7687 (for formal communications intended for entry and after-final communications),

or:

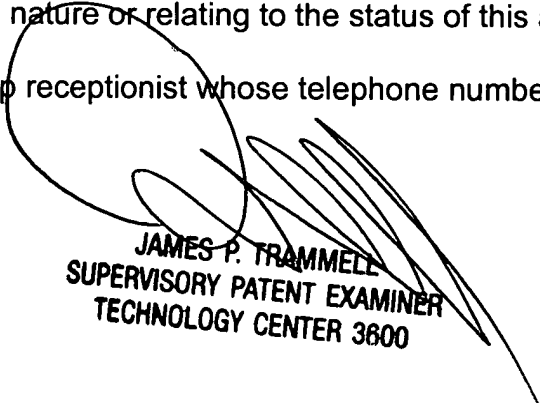
(703) 746-5532 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park 5,  
2451 Crystal Drive, 7th Floor Receptionist.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Calvin Loyd Hewitt II

January 9, 2005



JAMES P. TRAMMELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600